

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	CONSENT AGREEMENT
)	and FINAL ORDER
)	
Hutchinson Utilities)	Proceeding to assess a civil
Commission)	penalty pursuant to section
Hutchinson, Minnesota)	113(d) of the Clean Air Act,
)	42 U.S.C. § 7413(d).
)	
Respondent.)	Docket No.: CAA-5-2001-006
)	

CONSENT AGREEMENT

Jurisdiction

1. Complainant, Director of the Air and Radiation Division, United States Environmental Protection Agency ("U.S. EPA"), Region 5, initiated this administrative action on April 3, 2001 by filing an Administrative Complaint against the Hutchinson Utilities Commission in Hutchinson, Minnesota, (hereinafter "Respondent"), pursuant to section 113(d) of the Clean Air Act, as amended (the "Act"), 42 U.S.C. § 7413(d), for violations of the Act.

2. In the Complaint, the U.S. EPA alleged that Respondent violated various provisions of the Act's continuous emission monitoring requirements, listed at 40 C.F.R. Part 75, at Respondent's electric generating facility located at 225 Michigan Street in Hutchinson, Minnesota (the "Facility").

3. In the Complaint, the U.S. EPA proposed to assess Respondent a civil penalty of fifty-five thousand dollars (\$55,000) for the alleged violations.

Terms of Settlement

4. The U.S. EPA and Respondent agree that settlement of this matter and entry of this Consent Agreement and its associate Final Order (hereinafter "CAFO"), before the taking of any testimony and without the adjudication of any issue of fact or law herein, is the most appropriate means of resolving this matter and therefore is in the public interest.

5. Respondent admits the jurisdictional allegations stated in the Complaint.

6. Respondent neither admits nor denies the factual allegations stated in the Complaint.

7. Respondent consents to the execution and filing of this CAFO without additional notice.

8. Respondent consents to any and all other conditions specified in this CAFO.

9. Respondent waives any right to contest or appeal the jurisdictional or factual allegations stated in the Complaint, and waives any right to appeal the terms of this CAFO pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d).

10. Respondent also waives any right in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this CAFO and/or seek an additional penalty for noncompliance with this CAFO.

11. Respondent agrees that this CAFO shall apply to and be binding upon Respondent, its officers, directors, employees, assigns and successors.

12. Respondent agrees to give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of its Facility.

13. Respondent certifies that it has achieved compliance with all requirements of the Act that formed the basis of the allegations stated in the Complaint.

14. The U.S. EPA and Respondent each agree to bear their respective costs and attorneys fees, if any, that have been incurred because of this matter.

15. The U.S. EPA agrees to mitigate the penalty proposed in the Complaint after evaluating the facts and circumstances of this case, the penalty assessment criteria listed in section 113(e) of the Act, 42 U.S.C. § 7413(e), and Respondent's cooperation and good faith efforts to settle this matter, and by applying these factors to the "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991).

16. The U.S. EPA agrees to assess a civil penalty of thirty-nine thousand dollars (\$39,000) to resolve this matter.

17. Respondent agrees to pay a civil penalty of \$39,000 to resolve this matter.

18. Respondent agrees to pay the \$39,000 civil penalty as specified below.

General Provisions

22. This CAFO constitutes a full settlement by the U.S. EPA of all claims for civil penalties sought pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d), for the factual allegations stated in the Complaint. Nothing in this CAFO is intended, nor shall be construed, to operate in any way to resolve any criminal liability of Respondent that may arise from the factual allegations stated in the Complaint. Further, compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to other federal laws and regulations administered by the U.S. EPA.

23. Nothing in this CAFO shall be construed to relieve the Respondent from its obligation to comply with any and all applicable federal, state and local statutes, ordinances, regulations and permits.

24. This CAFO constitutes an "enforcement response" as that term is used in the "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" (October 25, 1991) to determine Respondent's "full compliance history," as required by section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1).

25. Each person signing this Consent Agreement certifies that he or she is fully authorized to enter into and legally bind the party whom he or she represents to the terms and conditions of this Consent Agreement.

19. Respondent agrees not to claim a federal income tax deduction or credit covering any part of the civil penalty paid to the U.S. Treasury under the terms of this CAFO.

Payment of the Civil Penalty

20. Respondent shall pay the \$39,000 civil penalty within thirty (30) calendar days after the filing of this CAFO with the Regional Hearing Clerk, U.S. EPA, Region 5. Payment shall be made by certified or cashier's check, payable to "Treasurer, the United States of America", and shall be sent to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

The check shall reference Respondent's name, the docket number of this CAFO, and the assigned "BD" number (which will be assigned after the CAFO is filed). A transmittal letter which also identifies Respondent's name, the docket number of this CAFO, and the assigned "BD" number shall also accompany the remittance of the check. Copies of the transmittal letter and check shall also be sent to:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590;

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590; and

Mr. Terence W. Stanuch
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

21. If Respondent does not pay the agreed upon civil penalty within the time-frame stated above, Respondent shall be liable, pursuant to 31 U.S.C. § 3717, for the following interest and late charges on any amount of the civil penalty that is overdue:

(a) Interest. Interest shall begin to accrue on any unpaid portion of the civil penalty that is not paid by the last date required. Such interest shall be assessed at the rate of the United States Treasury tax and loan rate, in accordance with 4 C.F.R. § 102.13(c).

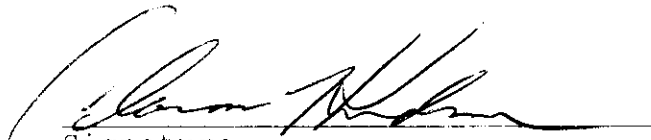
(b) Monthly Handling Charge. Respondent shall also pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar day period over which an unpaid balance remains.

(c) Non-payment Penalty. Respondent shall also pay a non-payment penalty of six percent (6%) per year on any portion of the civil penalty that is past due more than ninety (90) calendar days. This non-payment penalty will accrue from the date that the penalty payment became due but was not paid, and is in addition to any other charges which may accrue pursuant to subparagraphs (a) and (b) above.

26. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

27. This Consent Agreement constitutes the entire agreement between the U.S. EPA and Respondent regarding this matter.

Hutchinson Utilities Commission, Respondent:



Signature

November 28, 2001
Date

Clarence L. Kadrmas P.E.
Printed Name
Hutchinson Utilities Commission
Hutchinson, Minnesota

General Manager
Title

U.S. Environmental Protection Agency:

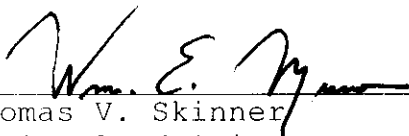

Bharat Mathur, Director
Air and Radiation Division (A-18J)
U.S. Environmental Protection Agency, Region 5

12-28-01
Date

FINAL ORDER

The terms and conditions of the foregoing Consent Agreement are hereby approved and incorporated by reference into this Final Order.

I HEREBY ORDER Respondent, Hutchinson Utilities Commission in Hutchinson, Minnesota, to comply with the foregoing terms and conditions of that Consent Agreement. That Consent Agreement, and this Final Order, dispose of this matter pursuant to section 22.18(b)(3) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(b)(3). This CAFO shall become effective immediately upon being filed with the Regional Hearing Clerk, U.S. EPA, Region 5.

for 

Thomas V. Skinner
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590



Date

CERTIFICATE OF MAILING

I, Loretta Shaffer, do hereby certify that a Consent Agreement and Final Order was sent by Certified Mail, Return Receipt Requested, to:

Clarence L. Kadrmas, P.E., General Manager
Hutchinson Utilities Commission
225 Michigan Street
Hutchinson, Minnesota 55350

I also certify that copies of the Consent Agreement and Final Order were sent by first class mail to:

Ann Foss, Enforcement Manager
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, MN 55155

on the 31st day of December, 2001.

Loretta Shaffer
Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9601 3533

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGION V

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REGIONAL
OFFICE
ST. PAUL